

Senator Kirk A. Cullimore proposes the following substitute bill:

COMMERCIAL EMAIL ACT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill enacts the Utah Commercial Email Act.

Highlighted Provisions:

This bill:

▶ enacts the Utah Commercial Email Act that (act):

• prohibits an advertiser or a person initiating an email from sending unauthorized or misleading commercial emails from this state or to an email address within this state;

• creates a cause of action for the electronic mail service provider, the recipient of the unsolicited commercial email, and any person whose brand, trademark, email address, or domain name is used without permission to recover damages related to unauthorized or misleading commercial emails;

• provides for enforcement of the act by the Division of Consumer Protection; and

• permits the prevailing party to recover attorney fees and costs in an action related to unauthorized or misleading commercial emails;

▶ defines terms; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

1st Sub. S.B. 225



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **13-2-1 (Superseded 12/31/23)**, as last amended by Laws of Utah 2022, Chapter 201

32 **13-2-1 (Effective 12/31/23)**, as last amended by Laws of Utah 2022, Chapters 201, 462

33 ENACTS:

34 **13-63-101**, Utah Code Annotated 1953

35 **13-63-201**, Utah Code Annotated 1953

36 **13-63-202**, Utah Code Annotated 1953

37 **13-63-203**, Utah Code Annotated 1953



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **13-2-1 (Superseded 12/31/23)** is amended to read:

41 **13-2-1 (Superseded 12/31/23). Consumer protection division established --**

42 **Functions.**

43 (1) There is established within the Department of Commerce the Division of Consumer
44 Protection.

45 (2) The division shall administer and enforce the following:

46 (a) Chapter 5, Unfair Practices Act;

47 (b) Chapter 10a, Music Licensing Practices Act;

48 (c) Chapter 11, Utah Consumer Sales Practices Act;

49 (d) Chapter 15, Business Opportunity Disclosure Act;

50 (e) Chapter 20, New Motor Vehicle Warranties Act;

51 (f) Chapter 21, Credit Services Organizations Act;

52 (g) Chapter 22, Charitable Solicitations Act;

53 (h) Chapter 23, Health Spa Services Protection Act;

54 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

55 (j) Chapter 26, Telephone Fraud Prevention Act;

56 (k) Chapter 28, Prize Notices Regulation Act;

- 57 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
- 58 Transaction Information Act;
- 59 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 60 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 61 (o) Chapter 41, Price Controls During Emergencies Act;
- 62 (p) Chapter 42, Uniform Debt-Management Services Act;
- 63 (q) Chapter 49, Immigration Consultants Registration Act;
- 64 (r) Chapter 51, Transportation Network Company Registration Act;
- 65 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 66 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 67 (u) Chapter 54, Ticket Website Sales Act;
- 68 (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- 69 (w) Chapter 57, Maintenance Funding Practices Act[-];
- 70 (x) Chapter 63, Utah Commercial Email Act.

71 Section 2. Section **13-2-1 (Effective 12/31/23)** is amended to read:

72 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

73 **Functions.**

- 74 (1) There is established within the Department of Commerce the Division of Consumer
- 75 Protection.
- 76 (2) The division shall administer and enforce the following:
- 77 (a) Chapter 5, Unfair Practices Act;
- 78 (b) Chapter 10a, Music Licensing Practices Act;
- 79 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 80 (d) Chapter 15, Business Opportunity Disclosure Act;
- 81 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 82 (f) Chapter 21, Credit Services Organizations Act;
- 83 (g) Chapter 22, Charitable Solicitations Act;
- 84 (h) Chapter 23, Health Spa Services Protection Act;
- 85 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 86 (j) Chapter 26, Telephone Fraud Prevention Act;
- 87 (k) Chapter 28, Prize Notices Regulation Act;

88 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
89 Transaction Information Act;

90 (m) Chapter 34, Utah Postsecondary Proprietary School Act;

91 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

92 (o) Chapter 41, Price Controls During Emergencies Act;

93 (p) Chapter 42, Uniform Debt-Management Services Act;

94 (q) Chapter 49, Immigration Consultants Registration Act;

95 (r) Chapter 51, Transportation Network Company Registration Act;

96 (s) Chapter 52, Residential Solar Energy Disclosure Act;

97 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;

98 (u) Chapter 54, Ticket Website Sales Act;

99 (v) Chapter 56, Ticket Transferability Act;

100 (w) Chapter 57, Maintenance Funding Practices Act; [and]

101 (x) Chapter 61, Utah Consumer Privacy Act[-:]; and

102 (y) Chapter 63, Utah Commercial Email Act.

103 Section 3. Section 13-63-101 is enacted to read:

104 **CHAPTER 63. UTAH COMMERCIAL EMAIL ACT**

105 **Part 1. General Provisions**

106 **13-63-101. Definitions.**

107 As used in this chapter:

108 (1) "Advertiser" means a person who advertises the person's product, service, or
109 website through the use of commercial email.

110 (2) "Commercial email" means an email used primarily to:

111 (a) advertise or promote a commercial website, product, or service; or

112 (b) solicit money, property, or personal information.

113 (3) "Division" means the Division of Consumer Protection.

114 (4) "Domain name" means any alphanumeric designation that is registered with or

115 assigned by any domain name registrar, domain name registry, or other domain name

116 registration authority as part of an electronic address on the Internet.

117 (5) "Electronic mail service provider" means a company or a service that provides

118 routing, relaying, handling, storage, or support for email addresses and email inboxes.

- 119 (6) "Header information" means information attached to an email, including:
120 (a) the originating domain name;
121 (b) the originating email address;
122 (c) the destination;
123 (d) the routing information; and
124 (e) any other information that appears in the header line identifying, or purporting to
125 identify, a person initiating the message.
- 126 (7) "Initiate" means an act of:
127 (a) originating, transmitting, or sending commercial email; or
128 (b) promising, paying, or providing other consideration for another person to originate,
129 transmit, or send a commercial email.
- 130 (8) (a) "Initiator" means a person who:
131 (i) originates, transmits, or sends commercial email; or
132 (ii) promises, pays, or provides other consideration for another person to originate,
133 transmit, or send a commercial email.
- 134 (b) "Initiator" does not include a person whose activities are a routine conveyance.
- 135 (9) "Preexisting or current business relationship" means a situation where the recipient
136 has:
137 (a) made an inquiry and provided an email address; or
138 (b) made an application, a purchase, or a transaction, with or without consideration,
139 related to a product or a service offered by the advertiser.
- 140 (10) "Recipient" means an addressee of an unsolicited email.
- 141 (11) "Routine conveyance" means an Internet service provider's or email provider's
142 automatic electronic mail message processes, including routing, relaying, handling, or storing
143 through an automatic technical process, for which a person other than the Internet service
144 provider or email provider has identified the electronic mail message recipients and provided
145 the recipients' addresses.
- 146 (12) "Unsolicited commercial email" means a commercial email sent by an advertiser
147 to a recipient that:
148 (a) has not provided direct consent to the advertiser to receive the commercial email;
149 and

- 150 (b) does not have a preexisting or current relationship with the advertiser.
- 151 (13) "Utah email address" means an email address that is:
- 152 (a) provided by an electronic mail service provider that sends bills for providing and
- 153 maintaining that email address to a mailing address in this state;
- 154 (b) ordinarily accessed from a computer located in this state; or
- 155 (c) provided to an individual who is currently a resident of this state.

156 Section 4. Section **13-63-201** is enacted to read:

157 **Part 2. Restrictions on Commercial Email**

158 **13-63-201. Prohibited uses of email.**

159 An advertiser or an initiator may not knowingly initiate or advertise in a commercial
160 email sent from this state or sent to a Utah email address if:

- 161 (1) the commercial email contains or is accompanied by a third party's domain name
162 without the permission of the third party;
- 163 (2) the commercial email contains or is accompanied by false, misrepresented, or
164 forged header information, even if the commercial email contains truthful identifying
165 information for the advertiser in the body of the email; or
- 166 (3) the commercial email has a subject line that is likely to mislead a recipient, acting
167 reasonably under the circumstances, about a material fact regarding the identity of the
168 advertiser, the contents, or the subject matter of the commercial email.

169 Section 5. Section **13-63-202** is enacted to read:

170 **13-63-202. Cause of action.**

171 (1) (a) The following persons may bring a claim against an advertiser or initiator who
172 violates Section [13-63-201](#):

- 173 (i) an electronic mail service provider;
- 174 (ii) a recipient of an unsolicited commercial email; or
- 175 (iii) a person whose brand, trademark, email address, or domain name an advertiser or
176 initiator uses, without authorization, in the header information.

177 (b) There is a rebuttable presumption that a commercial email that violates Section
178 [13-63-201](#) is an unsolicited commercial email.

179 (c) The burden of proving that a commercial email is not an unsolicited commercial
180 email is on the defendant.

181 (2) (a) A person described in Subsection (1)(a)(i) or (ii) may recover:

182 (i) actual damages; and

183 (ii) except as provided in Subsection (2)(c), liquidated damages of \$1,000 for each
184 unsolicited commercial email transmitted in violation of Section 13-63-201.

185 (b) If an addressee of an unsolicited commercial email has more than one email address
186 to which an advertiser or an initiator sends an unsolicited commercial email, the addressee is
187 considered a separate recipient for each email address to which the advertiser or the initiator
188 sends the unsolicited commercial email.

189 (c) If a court finds that an advertiser or an initiator used due diligence to establish and
190 implement practices and procedures to effectively prevent unsolicited commercial emails in
191 violation of this chapter, the court shall reduce the liquidated damages to \$100 for each
192 unsolicited commercial email transmitted in violation of Section 13-63-201.

193 (3) A person described in Subsection (1)(a)(iii) may recover:

194 (a) actual damages; and

195 (b) liquidated damages in an amount equal to the lesser of:

196 (i) \$1,000 for each commercial email transmitted in violation of this chapter that uses,
197 without authorization, a person's brand, trademark, email address, or domain name in the
198 header information; and

199 (ii) \$2,000,000.

200 (4) The prevailing party in an action brought under this section may recover reasonable
201 attorney fees and costs.

202 (5) (a) Defendants in an action under this section are jointly and severally liable.

203 (b) There is no cause of action under this section against an electronic mail service
204 provider who is involved only in the routine conveyance of commercial email over the email
205 service provider's computer network.

206 Section 6. Section 13-63-203 is enacted to read:

207 **13-63-203. Enforcement.**

208 (1) The division shall administer and enforce the provisions of this chapter in
209 accordance with Chapter 2, Division of Consumer Protection.

210 (2) The attorney general, upon request, shall give legal advice to, and act as counsel
211 for, the division in the exercise of the division's responsibilities under this chapter.

212 (3) (a) In addition to the division's enforcement powers under Chapter 2, Division of
213 Consumer Protection:

214 (i) the division director may impose an administrative fine of up to \$2,500 for each
215 violation of this chapter; and

216 (ii) the division may bring an action in a court of competent jurisdiction to enforce a
217 provision of this chapter.

218 (b) In a court action by the division to enforce a provision of this chapter, the court
219 may:

220 (i) declare that an act or practice violates a provision of this chapter;

221 (ii) issue an injunction for a violation of this chapter;

222 (iii) order disgorgement of any money received in violation of this chapter;

223 (iv) order payment of disgorged money to an injured purchaser or consumer;

224 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

225 (vi) award any other relief that the court deems reasonable and necessary.

226 (4) If a court of competent jurisdiction grants judgment or injunctive relief to the
227 division, the court shall award the division:

228 (a) reasonable attorney fees;

229 (b) court costs; and

230 (c) investigative fees.

231 (5) (a) A person who violates an administrative or court order issued for a violation of
232 this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

233 (b) A civil penalty authorized under this section may be imposed in any civil action
234 brought by the attorney general on behalf of the division.

235 (6) All money received for the payment of a fine or civil penalty imposed under this
236 section shall be deposited into the Consumer Protection Education and Training Fund created
237 in Section [13-2-8](#).

238 **Section 7. Effective date.**

239 This bill takes effect on May 3, 2023, with the exception of Section [13-2-1](#) (Effective
240 12/31/23), which takes effect on December 31, 2023.